

November 30, 2007

Mr. Bob Keller, Field Supervisor
Washington Federation of State Employees
1210 Eastside Street SE
Olympia, WA 98501-2443

RE: Michael Pierce v. Department of Labor & Industries
Director's Review Request 06AL0098

Dear Mr. Keller:

On July 25, 2007, I conducted a Director's review meeting at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning the allocation of Michael Pierce's position (#2801) and Angela Emter's position (#3423). Present at the Director's review meeting were you, Mr. Pierce, and Ms. Emter. Also present were Human Resources Manager Sandi LaPalm and Human Resources Consultant Debbie Yantis, representing the Department of Labor & Industries (LNI).

Background

The Position Description Form (PDF) for position #2801 was updated as an L&I Auditor 4 In-training position and signed by Mr. Pierce October 12, 2005 (Exhibit E). On February 22, 2006, LNI's Human Resources Office received a PDF requesting reallocation of Mr. Pierce's position to the Medical Program Specialist 1 classification (Exhibit D). At that time, the Human Resources Office also received a PDF requesting reallocation of Ms. Emter's position from an L&I Auditor 4 In-Training position to a Medical Program Specialist 1 In-training. In addition, Mr. Pierce's and Ms. Emter's supervisor, L&I Auditor 5 Brenda Boles requested reallocation of her position from L&I Auditor 5 to Medical Program Specialist 2.

Ms. Yantis subsequently conducted a desk audit and interviewed Mr. Pierce and Ms. Boles (Exhibit F). By letter dated May 31, 2006, Ms. Yantis informed Mr. Pierce his position was properly allocated to the L&I Auditor 4 classification (Exhibit B). Ms. Yantis concluded the majority of Mr. Pierce's work time was spent detecting and eliminating provider fraud and abuse by performing Industrial Insurance provider audits

and related duties. Therefore, she determined Mr. Pierce's position was appropriately allocated.

On June 27, 2006, the Department of Personnel received Mr. Pierce's request for a Director's review of LNI's determination (Exhibit A).

Summary of Mr. Pierce's Perspective

Mr. Pierce contends the work he performs in the Fraud Prevention and Compliance/Provider Fraud unit is similar to the work performed by the Medical Program Specialist (MPS) positions in the Health Services Analysis (HSA) unit. Mr. Pierce asserts both positions perform audits by definition and determine dollar amounts owed to the state. Mr. Pierce asserts "cost containment" is inherent in his position as well as MPS positions, and he contends MPS positions do not perform duties in actual cost containment programs. Rather, Mr. Pierce asserts the nature of the work performed by both L&I Auditor and MPS positions results in cost containment. As an example, Mr. Pierce states he prepares reports that identify loopholes in policies, which he believes to be consistent with cost containment. Mr. Pierce further states that he meets with the Payment Issues Resolution Committee (PIRC) to further assist with cost containment issues.

Mr. Pierce asserts that historically these positions perform the same level of work and at one time were assigned to the same work unit. However, Mr. Pierce contends his position has the added responsibility of dealing with criminal fraud investigations, which he asserts MPS positions do not perform (Flow Chart, Exhibit Q). Mr. Pierce asserts the MPS positions are assigned to a higher salary range, which he views as an inequity. Mr. Pierce contends the salary range of the L&I Auditor 4 is not consistent with the level of responsibility and asserts the Auditor 4 class, not specific to LNI, is at a higher salary range for performing less complicated audits. Mr. Pierce contends his position not only deals with fraud prevention and cost containment but also serves to educate providers, which he believes is more consistent with the MPS class. Mr. Pierce states that in early 2006, he learned that some L&I Auditor positions were reallocated to Medical Program Specialist positions. Mr. Pierce contends those positions perform the same functions as his position. Similarly, Mr. Pierce asserts the level of work and responsibility assigned to his position best fit the Medical Program Specialist 1 classification.

Summary of LNI's Reasoning

LNI acknowledges that historically there was a position within the HSA that performed provider fraud audits. However, LNI asserts the department expanded the existing program to include the Fraud Prevention and Compliance/Provider Fraud Unit. Further, L&I asserts that at the request of the Provider Fraud Program Manager, Lee Benford, the L&I Auditor class specifications were specifically revised in 2001 for the purpose of including work assigned in the Provider Fraud Unit as a Provider Fraud Specialist. LNI

contends Mr. Pierce's position fits the L&I Auditor 4 class because the primary purpose of his position is to investigate provider fraud and perform audits.

LNI asserts the Medical Program Specialist (MPS) positions perform work in a completely different discipline than the L&I Auditor positions. L&I asserts MPS positions act as project leads in the Health Services Analysis (HSA) unit and are charged with developing medical fee payment policies based on research and analysis in the medical field. For example, LNI states an MPS position may be researching claims from injured workers related to head injuries and then researching and analyzing similar medical conditions to determine appropriate fee schedules. While LNI acknowledges some auditor positions in HSA were reallocated to MPS positions due to an expansion of duties, LNI contends that is not the case with Mr. Pierce's position. LNI further asserts the flow chart example (Exhibit Q) is only one component of an MPS position's assigned duties. LNI contends the "cost containment" issues related to MPS positions encompass an entire process, which is more involved than the auditing piece of identifying fraud and recouping losses.

L&I asserts the February 2006 PDF submitted for reallocation was significantly different than the updated PDF dated October 2005, and the department asserts the October 2005 PDF more accurately depicts the duties assigned to Mr. Pierce's position. Although LNI recognizes the L&I Auditor classes are at a range lower than the generic Auditor classes, the department contends the allocation process is not the proper forum for changing a class specification. Based on the assigned duties and responsibilities, L&I contends the L&I Auditor 4 classification best describes the duties assigned to Mr. Pierce's position.

Director's Determination

This position review was based on the work performed from October 2005 when Mr. Pierce's updated PDF was submitted to the Human Resources Office to February 22, 2006, the date of his reallocation request. I acknowledge Mr. Pierce may have been performing the work prior to the updated PDF, dated October 12, 2005.

As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review meeting, and the verbal comments provided by both parties. Based on my review and analysis of Mr. Pierce's assigned duties and responsibilities, I conclude his position is properly allocated to the L&I Auditor 4 classification.

Rationale for Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This

review results in a determination of the class that best describes the overall duties and responsibilities of the position. See Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

The Labor and Industries Auditor 4 (L&I Auditor 4) definition notes this position is a senior level of this class series. The definition then states that auditors either "serve as a lead worker within a region . . . or work in the Provider Fraud Unit as a Provider Fraud Specialist."

The Medical Program Specialist 1 (MPS 1) definition states, "[i]n the Health Services Analysis Office . . . performs medical analysis, evaluation, development, implementation, policy promulgation and/or contract administration in health care cost containment programs." Positions also "provide consultative services to medical providers and/or department staff regarding health care cost containment programs."

When comparing Mr. Pierce's assigned duties and responsibilities to the above class specifications, I considered both the PDF signed by Ms. Boles, Program Manager Lee Benford, and Mr. Pierce on October 12, 2005, and the PDF signed by Ms. Boles, Program Manager Carl Hammersburg, and Mr. Pierce in February 2006.

The October 2005 PDF (Exhibit E) describes the position's purpose as follows:

This position supports the agency mission by performing Industrial Insurance provider audits, case preparations, and investigative duties, assisting in the prosecution and litigation of provider fraud cases, recouping monies identified in the audit process, and successfully terminating the provider numbers of those found guilty of defrauding or abusing the Medical Aid Fund.

Approximately four months later, the February 2006 PDF (Exhibit D) was submitted for reallocation. The description of the position's purpose included the above language but began with the following paragraph:

This position reports to the Medical Program Specialist 2 in charge of the Provider Fraud Audit staff in the Provider Fraud Program. This position is engaged in the review, analysis and monitoring of health care cost containment programs to purchase medically appropriate, quality and cost effective health services for injured workers through the review of medical billings. This position provides consultative services to medical providers and/or department staff regarding health care cost containment programs.

Although Mr. Pierce's supervisor concurrently requested reallocation of her position to the Medical Program Specialist 2 class, Mr. Pierce actually reported to an L&I Auditor 5 position.

As stated on the October 2005 PDF, the next paragraph on the February 2006 PDF read as follows:

This position contributes to the agency's overall mission to detect and eliminate provider fraud and abuse, by performing Industrial Insurance provider audits, case preparations, and investigative duties, assisting in the prosecution and litigation of provider fraud cases, recouping monies identified in the audit process, and successfully terminating the provider numbers of those found guilty of defrauding or abusing the Medical Aid Fund.

When reviewing the majority of duties identified as 65% on the October 2005 PDF and 55% on the February 2006 PDF, both PDFs include the duties of performing Industrial Insurance provider forensic audits, case preparations, and investigative duties. In that capacity, Mr. Pierce gathers and analyzes evidence acquired during the investigation of fraud cases. He also examines and investigates provider patient files, billings, accounts, and records for injured workers to determine that billings and services rendered are appropriate and justified. When considering whether or not provider services are justified, Mr. Pierce determines whether the services are in accordance with fiscal, healthcare and injured worker care standards, L&I Medical Aid Rules, and fee schedules. Mr. Pierce also identifies, selects, and analyzes provider records and prepares detailed audit reports and issues Order and Notices to communicate department findings and directives. These duties are consistent with the definition of the L&I Auditor 4 class because they involve auditing as a provider fraud specialist working in the Provider Fraud Unit.

On the February 2006 PDF, the following duties were also included in the section identified as 55%:

- Conducts in-depth analysis of health care cost issues through the identification and comprehensive evaluation, examination, forensic audits and reviews of aberrant billing trends and complex issues.
- Reviews provider disputes, assesses policy implications and outcomes, and recommends changes to policy language. Identifies and recommends improvements to medical payment systems resulting from the review of aberrant billing trends.
- Confers with other department staff in the development and implementation of program and procedural changes to ensure compliance.
- Provides consultative services to department staff and medical providers regarding medial audit program administration rules and policies.

During the Director's review meeting, Ms. Yantis stated she conducted a desk audit because there were differences between the PDF submitted for reallocation and the updated PDF, which had been approved a few months earlier. In her audit notes (Exhibit F), Ms. Yantis indicated she spoke with Ms. Boles, Mr. Pierce, and other staff. In her conversations, as well as a review of the job duties and examples of work provided by

Mr. Pierce, she noted these positions had been defined as being in the "Provider Fraud Unit performing audits or potential fraud referenced and provided through referrals." The referrals come through areas such as the Provider Hotline, a Medical Treatment Adjudicator, Claims Manager, or Field Investigation. From the desk audit, Ms. Yantis indicated Mr. Pierce and Ms. Emter "review samples of bills and conduct a review of the data and bills that the agency is being billed verses what is allowed amount to be billed for." They also conduct in-depth investigations, as indicated on both PDFs, and issue an audit paper synthesizing the data, breaking down problems, and providing education and directives to providers. These audit findings are used to give providers guidance for future changes and for use in criminal and civil proceedings.

It is undisputed Mr. Pierce and Ms. Emter perform provider fraud audits and investigations. It is the "medical analysis" piece that Mr. Pierce and Ms. Emter believe justifies reallocation. As stated during the Director's review meeting, it is also the discovery that other positions had been reallocated in the HSA unit. When considering allocation, the duties of a position are compared to the available class specifications, not other positions. First, Mr. Pierce's position is not located in the HSA Office as indicated in the definition of the MPS 1 class specification. However, in considering whether he performs "medical analysis, evaluation, development, implementation, [and] policy promulgation . . . in health care cost containment programs," I reviewed the case summaries provided.

In reviewing Mr. Pierce's case summaries, they show audit findings that support allocation to the L&I Auditor classification. For example, Mr. Pierce investigates duplicate charges where the department was billed for services not provided and for services above acquisition costs for hearing aids and annotated copies of bills that did not match invoice price (Exhibit K-18); investigates a billing for x-ray services without a report or insufficient report per professional practice and payment rules (Exhibit K-16); investigates an over billing of a form that was required to be requested by the employer, which involved contacting claimants and educating provider on policy regarding use of form (Exhibit K-13); training provider and office manager on provider numbers, x-ray, documentation, and report requirements, providing information on fee schedule and billing guides (Exhibit K-15); and performs audits that turn into training visits, such as explaining the use of billing codes following a fee schedule guide (Exhibit K-21).

The above examples are consistent with Ms. Yantis's conclusion in the desk audit that the positions audit and investigate provider records to detect fraud, not perform medical analysis or policy promulgation indicative of the MPS classes.

Although the examples of work do not form the basis for an allocation, they lend support to the work envisioned within a classification. The typical work identified on the L&I Auditor 4 class specification that most resembles Mr. Pierce's duties includes, in part, the following:

- Researches, prioritizes, selects, and targets non-compliant provider groups, and identifies compliance problems; monitors audit results; determines need for changes to deal with peculiarities; develops specialized auditing skills and methods.
- Documents common reporting discrepancies and specialized audit techniques for targeting non-compliance.
- Consults with provider to solve compliance problems.
- Determines the most viable service (audit or education) program for reducing non-compliance.
- Becomes familiar with all facets of a specific industry/provider group, including on-site visits.
- Conducts specialized industry research to develop complex formulas and checklists of financial records to verify reports to the department.
- Evaluates assignment and analyzes industry/provider group history to determine type of audit to be conducted.
- Performs extensive investigation to identify fraudulent activities.
- Discusses audit findings with providers, explains proper reporting procedures and relevant portions of the Industrial Insurance laws.
- Testifies before legal bodies.
- Interprets Industrial Insurance laws and related WACs and proposes changes.
- Recommends procedural changes.
- Delivers employer education presentations to providers.

I recognize Mr. Pierce collaborates with staff in the HSA, makes recommendations, takes issues to the Payment Issue Resolution committee, and educates providers on rules and procedures for compliance. However, his position is not responsible for in-depth analysis of health care cost issues and programs or development and implementation of changes to medical program policies, as envisioned in the MPS 1 class.

During the Director's review meeting, Mr. Pierce raised the issue of salary inequity between the L&I Auditor classes and the generic Auditor classes, as well as other agency-specific classes such as Department of Revenue. While I understand Mr. Pierce's point, salary inequity is not an issue addressed through the allocation process. As noted by the former Personnel Appeals Board (PAB), "[s]alary inequity is not an allocation criteria [*sic*] and should not be considered when determining the appropriate allocation of position." Sorensen v. Dept's Of Social and Health Services and Personnel, PAB Case No. A94-020 (1995). In addition, any revisions to class specifications are handled through a classification and pay proposal process, not through the allocation process.

It is clear Mr. Pierce performs a thorough and detailed audit, as demonstrated with the case studies, and that he has strong medical billing knowledge. However, a position review is not a reflection of performance or an individual's ability to perform higher-level duties. Rather, a position review is limited to the duties and responsibilities

assigned to the incumbent's position and how the majority of those duties best fit with the available job classifications. Based on the overall assignment of work, the L&I Auditor 4 classification best describes Mr. Pierce's position #2801.

Appeal Rights

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons
Director's Review Supervisor
Legal Affairs Division

c: Michael Pierce
Sandi LaPalm, LNI
Debbie Yantis, LNI
Lisa Skriletz, DOP

Enclosure: List of Exhibits